

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

Request for Review)

CC Docket No. 97-21

by Integrity Communications Ltd.)

CC Docket No. **96-45**

of the Decision of the)

Universal Service Administrator)

PETITION FOR REVIEW

Integrity Communications, Ltd. (“Integrity Communications”), by its counsel, hereby requests that the Commission review *de novo* the attached Decision (Exhibit A) of the School and Libraries Division (“SLD”) of the Universal Service Administrative Company (“USAC”) pursuant to 47 C.F.R. §§ 54.719 and 54.723.

I. INTRODUCTION

Integrity Communications seeks review of SLD’s decision denying Rio Grande Independent School District’s (“Rio Grande I.S.D.”) application for Year 2001-2002 (“Year Four”) e-Rate funding because the parties’ contract allegedly provides for a multi-year payment plan.

II. SUMMARY OF FACTS AND ARGUMENT

Integrity Communications is a service provider of equipment for voice, video and data communications, including internal connections, and operates throughout the state of Texas. On March 1, 2001, Rio Grande City I.S.D. submitted Form 471 to SLD in order to apply for e-Rate Program funding. Within Form 471, San Diego I.S.D. designated

Integrity Communications as the service provider it was going to utilize for internal connections for the e-Rate Program.

On February 8, 2002, SLD sent a letter denying Rio City Grande I.S.D./Integrity Communications' funding request for Year Four because "no contract or legally binding agreement was in place when the Form 471 was filed." On March 5, 2002, Integrity Communications filed a letter of appeal with SLD arguing that a legally binding contract had been entered into between Integrity Communications and Rio Grande City. (Exhibit B) On September 9, 2002, SLD issued a decision on the appeal which stated "approved, but funding denied." (Exhibit A) According to SLD's letter, it determined that Integrity Communications' documentation supported the fact that there existed a legally binding agreement between Integrity Communications and Rio Grande City I.S.D. During this first phase of the review, SLD relied on the statement of Rio Grande I.S.D. explaining that there was a legally binding agreement in reversing its initial assumption that there was no legally binding commitment. Despite this finding, SLD denied the request for e-Rate funding based on another issue that had not been previously raised by SLD and which the parties were never given the opportunity to address. USAC's rules regarding appeals state that if a new denial reason is given in the Administrator's Decision on Appeal, then SLD is making a new decision and appellants have 60 days from the date of the Administrator's Decision Letter to file a new appeal either with SLD or the FCC. Thus, Integrity Communications is timely filing this appeal with the FCC.

In its September 9, 2002, decision letter, SLD stated that one set of documents submitted to SLD in relation to Rio Grande City I.S.D./ Integrity Communications' funding request included provisions that provided Rio Grande City the option to pay for

services on a multi-year payment plan while a later set of documents submitted to SLD did not include a multi-year payment plan. To be more specific, Rio Grande City submitted Integrity Communications' bid proposal (dated September 11, 2001) to SLD. The bid proposal included a provision which permitted Rio Grande City I.S.D. the option to pay amounts due on a multi-year payment plan. Subsequently, on December 7, 2001, Integrity Communications provided SLD, via Congressman Ortiz's office, with the final binding agreement between Integrity Communications and Rio Grande City I.S.D. This final agreement does not contain the five-year payment plan option, because Rio Grande declined to accept such an offer. *See* Affidavit of Roel E. Smith, Superintendent of Rio Grande I.S.D., paragraph 3 ("Smith Affidavit," Exhibit C); Affidavit of William Sugarek, President and CEO, Integrity Communications, Inc., paragraph 3 ("Sugarek Affidavit," Exhibit D).

Despite SLD's concerns regarding its confusion about whether or not there was a multi-year payment plan option, it made no attempt to contact either Rio Grande City I.S.D. or Integrity Communications regarding this issue. Integrity Communications and Rio Grande City I.S.D. were not aware that this was a potential issue that could cause the request for Year Four funding to be denied.¹ Due to this discrepancy, SLD stated that it assumed Rio Grande I.S.D. accepted the five-year payment plan presented in the bid proposal, which is allegedly not permitted by USAC's rules. Therefore, SLD denied Rio Grande I.S.D./Integrity Communications' funding request.

SLD justified its denial on the assumption that there was a discrepancy in the information supplied "by the applicant." However, the details of the facts are important

¹ In fact, when one of Integrity Communications' employees attended a USAC seminar during this time, she understood the SLD representative to state that multi-year payment plans were permitted.

in understanding SLD's error. SLD states in its Decision On Appeal that "[n]o explanation of the change in the document was presented at that time, or subsequently in the appeal letter." We note, however, that SLD did not notify Rio Grande City I.S.D. or Integrity Communications that it was confused by an apparent discrepancy in the documents, nor did it ask for any explanation, even though SLD had noticed the difference in the documents before issuing its decision. Smith Affidavit at para. 5. We also point out that SLD received its documents from two different sources three months apart – one from Rio Grande City I.S.D. in September 2001 and the other from Integrity Communications in December 2001. SLD did not receive both sets of documents "from the applicant" as stated in the decision.

Had SLD inquired with either Rio Grande City I.S.D. or Integrity Communications regarding the discrepancy, it would have learned that Rio Grande City I.S.D. had inadvertently submitted the original bid proposal tendered by Integrity Communications, which contained the option of paying all at once or over multiple years. As stated earlier, this original bid proposal was drafted in reliance on information tendered by SLD employees that payments over time were acceptable.

In any event, the final proposal accepted by Rio Grande City I.S.D., after consideration by the school administrators, did not contain the multi-year payment plan. Rio Grande City I.S.D. had decided that as it had budgeted the funds to pay for the project in full during the then current funding year, that it would tender full payment on the contract at once, and not over time. It was this final proposal, which was adopted by the School Board, that was submitted by Integrity Communications to SLD.

In its Decision Letter, SLD cites *In re Request for Review of the Decision of the Universal Service Administrator by New Orleans Public Schools*, CC Docket No. 96-45, DA 02-74 [sic] (rel. September 18, 2001)². That case, however, does not support the position taken by SLD. In *New Orleans Public Schools*, SLD asked New Orleans Public Schools twice to explain the differences in budgeted amounts provided to SLD. The Bureau specifically noted that “New Orleans’ Request for Review likewise provides no explanation [for the discrepancies in various information submitted by New Orleans Public Schools on multiple occasions], despite being apprised of the need for an explanation by the Administrator’s Decision on Appeal.” *Id.* at para 16. The Bureau noted that the “applicant alter[ed] critical data without explanation in response to concerns expressed by SLD.” *Id.*

In contrast, under the current appeal, SLD notified neither Rio Grande City I.S.D. nor Integrity Communications of an apparent conflict in the original bid proposal as compared to the proposal accepted by Rio Grande City I.S.D.. Smith Affidavit at para. 5; Sugarek Affidavit at para. 4. The information received by SLD came from two different parties, one of whom inadvertently supplied the initial proposal instead of the final proposal in the form accepted by Rio Grande City I.S.D.. Smith Affidavit at para. 6; Sugarek Affidavit at para. 4. SLD admitted, in its opinion, that it merely assumed that the first document was the correct one, even though it made no attempt to inform the parties of the apparent confusion. SLD could have easily resolved this issue, as it did the initial issue of the existence of a binding agreement, by merely asking Rio Grande City I.S.D. and Integrity Communications to clarify whether the final legally binding

² We note that the correct citation for this case is *Request for Review of the Decision of the Universal Service Administrator by New Orleans Public Schools*, CC Docket No. 96-45, 97-21, DA 01-2097, 16 F.C.C.R. 16653 (CCB 2001).

agreement contained a multi-year payment plan. As is evidenced by the attached affidavit, and the explanations contained herein, SLD did not inquire with Rio Grande City I.S.D. or Integrity Communications. Smith Affidavit at para. 5; Sugarek Affidavit at para. 4. The need for this appeal could have easily been avoided.

Rio Grande City I.S.D. and Integrity Communications are entitled to the protections of the same basic notions of due process and administrative procedure, regardless of whether their applications **are** being reviewed by either SLD or the Commission. Among the basic principles of due process is the fundamental protection of being advised of the elements of a review and being given an opportunity to respond before a ruling is made. While Integrity Communications could file an appeal with SLD for a review of its new findings, the entire process could have been expedited had SLD informed either Rio Grand City I.S.D. or Integrity Communications of their new source of concern. As Integrity does not want to introduce additional delays into the review of this application, it has chosen to file this appeal directly with the Commission.

In summary, SLD's assumption was erroneous and the final binding agreement between Rio Grande City I.S.D. and Integrity Communications does not contain a provision that permits a multi-year payment plan. In fact, Rio Grande City I.S.D. preferred a lump sum payment in the current year and never intended to arrange payment over a multi-year period. Smith Affidavit at para. 3. In the attached affidavit, Mr. Smith explains that Rio Grande City I.S.D. approved current-year payment for all services to be rendered under the agreement with Integrity Communications. Therefore, it is clear that the Year Four funding should not have been denied by SLD.

III. Conclusion

On de novo review, Petitioner requests that the Commission direct SLD to grant Integrity Communications and Rio Grande City I.S.D.'s application for Year Four funding. Integrity Communications requests that the Commission direct SLD to immediately authorize the release of funds requested in Rio Grande City I.S.D.'s original application, with no further delay, so that work can commence on a timely basis.

Respectfully submitted,

INTEGRITY COMMUNICATIONS

By: 

Walter Steimel

Tracie Chesterman

Greenberg Traurig

800 Connecticut Ave., NW

Suite 500

Washington, D.C. 20006

Its Counsel

EXHIBIT A



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2001-2002

September 9, 2002

Bill Sugarek
Integrity Communications
Re: Rio Grande City Independent School District
P. O. Box 260154
Corpus Christi, TX 78426

Re: Billed Entity Number: 141677
471 Application Number: 256003
Funding Request Number(s): 638882
Your Correspondence Dated: March 5, 2002

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year Four Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 638882

Decision on Appeal: **Approved, but Funding Denied**

- You have stated in your appeal letter that you feel that based on the legal definition of binding agreement, that you did in fact have a legally binding agreement at the time the Form 471 was filed by the Rio Grande City I.S.D. (RGCISD). You are asking SLD to reverse their decision and fund this request.
- Based on your appeal a thorough review of the documentation provided for this funding request was re-evaluated. SLD has determined that your documentation does support the fact that you did enter into a legally binding agreement with Rio Grande City ISD with their acceptance of a bidding proposal submitted for the Board of Technology meeting on **January** 17, 2001.
- Although we asked for a copy of the contract, none was provided. Therefore, we are relying on the information presented in the bid as the terms of the legally binding

agreement. We further have no information from Rio Grande to show that they affirmatively denied or rejected any portion of the bid response.

- The Integrity Communications bid proposal that was submitted to SLD by Eduardo Saenz of the Rio Grande City CISD, Office of Technology, dated September 11, 2001, includes provisions for a multi-year payment plan. In the bid proposal, the service provider stated that the Total Cost to the district for the requested services was \$167,544.79. The proposal then further states:

“Rio Grande City ISD will be receiving \$1,871,327.76 worth of technology equipment/services for only \$33,508.96 per year. Paid **in** five annual installments of \$33,508.96 beginning at completion of the project!”

- On December 7, 2001, Juana Garza of Integrity emailed copies **of** the binding agreements to Sylvia Ramirez in Congressman Ortiz’ office. These were forwarded to SLD later that same day. However, this version **of** the bid proposal makes no mention of the five-year payment plan.
- No explanation **of** the change in the document was presented at that time, or subsequently in the appeal letter.
- *In re Request for Review of the Decision of the Universal Service Administrator by New Orleans Public Schools*, CC Docket 96-45, 97-21, DA 02-74 (rel. September 18, 2001) the FCC held that when the SLD is presented with conflicting information, and is not given **an** explanation or reconciliation of the discrepancies, the SLD can reasonably rely on the original statement of the applicant. The FCC states in that Order, “where an applicant alters critical data without explanation in response **to** concerns expressed by SLD, our confidence in the accuracy of the subsequent data is undermined.” Therefore, we believe that the applicant accepted the five-year payment plan presented in the proposal.
- FCC rules require applicants to certify on each FCC Form 471 submitted that they have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services. See Schools and Libraries Universal Service, Services Ordered and Certification Form 471, Block 6, Item 25, OMB 3060-0806, October 2000. This requires you to pay your service provider the full cost of the non-discounted portion you owe **to** your service provider from the funds you budgeted within that funding year.
- RGCISD certified that they had secured access to these funds in their budget for the funding year indicated. The legally binding agreement indicates that RGCISD will not pay your service provider from the funds RGCISD represented to the SLD that RGCISD has budgeted within that funding year. Since RGCISD is required to pay your service provider from those funds, SLD denies your appeal.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC) via United States Postal Service: FCC, Office of the Secretary, 445-12th Street SW, Washington, DC 20554. If you are submitting your appeal to the FCC by other than United States Postal Service, check the SLD web site for more information. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. The FCC must RECEIVE your appeal WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER for your appeal to be filed in a timely fashion. Further information and new options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, www.sl.universalservice.org.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Roel Smith
Rio Grande City C.I.S.D.
Fort Ringgold
Rio Grande City TX 78582

EXHIBIT B



Rio Grande City I.S.D.	Form 471 Application Number	Funding Request Number (s)	Entity Number
	256003	638882	141677

4. Explain your appeal to the SLD.

This is an "Appeal". This particular district was denied funding for the following reason.

Rio Grande City I.S.D.	Funding Commitment Decision	Funding Request Number (s)
	No Contract or Legally Binding agreement When Form 471 was tiled.	638882

Offer:

"The first step to a contract is an offer. An offer is a written or spoken statement by a party of his or her intention, to be held to a commitment upon acceptance of the offer."

- ❑ Rio Grande City I.S.D. Requested a quote for particular items and services from Integrity Communications, of which Integrity Communications responded with a written and spoken statement of Integrity Communications' intentions to provide all of the items and services requested; including details, prices, warranties, etc.

Acceptance:

"The second requirement for a valid contract is acceptance of the offer."

- ❑ Rio Grande City I.S.D., in fact, accepts the contractual agreement with Integrity Communications responding with a written and verbal acceptance. The appropriate authorized individual signed the 471 after agreement of all terms and conditions following board approval of the contract.

Consideration:

"Consideration is a legal concept that describes something of value, given in exchange for a performance or a promise of performance, and is the third requirement for a valid contract."

- ❑ Integrity Communications clearly stated the price of all items and services offered to Rio Grande City I.S.D. in writing and verbally. These prices (consideration) were agree-upon, in advance, prior to the signing of the Form 471 and had board approval.

Integrity Communications has consulted four separate 'Contract-Specialized' attorneys in regards to this matter. All four have equivocally assured us that, according to "Contract Law" and the "FCC Form 471 Instructions-October 2000-Page 17", under signed contracts section that a "legally binding agreement between you and your service provider preparatory to a formal signed contract" in fact did exist. Our council has further informed us that, not only did we have a legally binding agreement, but in fact, by law, we had a written "legally binding contract."

This legally binding agreement is clear to Integrity Communications, Rio Grande City I.S.D. personnel, Rio Grande City School Board, and is undisputable by all involved parties.

Since the wording of the explanation of "Signed Contract" on Page 17 of FCC Form 471 instructions-October 2000, states you must have a signed contract OR a legally binding agreement between you and your service provider, and since Integrity Communications and Rio Grande City I.S.D. had, **by** law, a legally binding agreement, we respectfully, honorably, and formally request an immediate decision reversal of the previously denied requests for funding, and that all equipment and services contracted by Rio Grande City I.S.D. with Integrity Communications be accepted **by** SLD as legally binding and legitimate.

We anxiously await your decision on this matter and look forward to a positive future relationship with USAC and the SLD.

Bill Sugarek, CEO

EXHIBIT C

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Request for Review

by Integrity Communications

of the Decision of the

Universal Service Administrator

CC Docket No. 97-21

CC Docket No. 96-45

AFFIDAVIT OF ROEL R. SMITH

1. I am Roel R. Smith, Superintendent of Rio Grande City Independent School District ("Rio Grande City I.S.D.") and have held this position throughout the relevant time period. My responsibilities as Superintendent include overseeing the preparation and filing of applications for e-Rate Funding with the School and Libraries Division ("SLD") of the Universal Service Administration Company ("USAC"). I have final responsibility for contract acceptance and review, and program compliance and completion.

2. In response to Rio Grande City I.S.D.'s Form 470, Integrity Communications submitted a bid proposal to provide telecommunications/internet services. Integrity Communications' bid proposal contained alternate provisions permitting Rio Grande City I.S.D. to pay for services rendered pursuant to either a lump sum payment when the services were performed or payment pursuant to a multiyear payment plan.

3. Subsequently, Rio Grande City I.S.D. accepted the bid of Integrity Communications, but opted for the single immediate payment instead of the multi-year payment plan provision. The District preferred the current-year payment for all services rendered as the amounts were budgeted and available in the current year. The final binding agreement between the parties contains a provision providing only for current-year payment for all services to be rendered and omitting the multi-year payment plan.

4. On March 1, 2001, Rio Grande City I.S.D. submitted the Form 471 application to SLD to apply for e-Rate Program funding for Funding Year 2001-2002. Within Form 471, Rio Grande City I.S.D. designated Integrity Communications as the service provider it was going to utilize for the e-Rate Program.

5. On September 9, 2002, SLD denied Rio Grande City I.S.D.'s request for funding based on the fact that one set of documents submitted to SLD by the District on September 11, 2001, in relation to Rio Grande City I.S.D./ Integrity Communications' funding request, included provisions that provided Rio Grande City I.S.D. the option to pay for services on a multi-year payment plan while a later set of documents submitted to SLD by Integrity Communications on December 7, 2001, did not include a multi-year payment plan. Due to this discrepancy, SLD stated that it assumed Rio Grande I.S.D. accepted the five-year payment plan presented in the bid proposal, which is allegedly not permitted by USAC's rules. To the best of my knowledge, no one from Rio Grande City I.S.D. was contacted by SLD regarding this discrepancy.

6. Had this matter been brought to my attention, we would have been able to tell SLD that we inadvertently sent a copy of the initial proposal from the files and not the

final accepted proposal. The final adopted proposal did *not contain* a multi-year payment plan and was the one submitted to SLD by Integrity Communications.

7. SLD's assumption was erroneous and the legally binding agreement between Rio Grande City I.S.D. and Integrity Communications does not *permit* a multi-year payment plan.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is *true and correct*.


Roel R. Smith, Superintendent

Subscribed and Sworn to Before
Me, a Licensed Notary Public, this
6 day November 2002

My Commission Expires

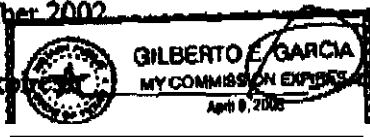




EXHIBIT D

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

Request for Review

by Integrity Communications

of the Decision of the

Universal Service Administrator

CC Docket No. 97-21

CC Docket No. 96-45

AFFIDAVIT OF MR. WILLIAM SUGAREK

1. I am Mr. William Sugarek. I am President and CEO of Integrity Communications, Inc., and have held that position throughout the relevant time period. My responsibilities as President and CEO include overseeing the preparation and filing of bid proposals for e-Rate Funding projects, and oversight of the completion of contracts executed under the universal service program.

2, At the time Form 471 was submitted to SLD, Rio Grande City I.S.D. and Integrity Communications had entered into a legally enforceable agreement for Integrity Communications to provide internal connections Rio Grande City I.S.D.

3. Integrity Communications was notified by Rio Grande City I.S.D. that SLD had requested evidence of a legally binding agreement. On December 7, 2001, while discussing SLD's request in this and other matters with staff from Congressman's Ortiz's office, Integrity Communications provided the Congressman's staff with a copy of the final bid proposal that was accepted by Rio Grande City I.S.D. This final bid proposal, as

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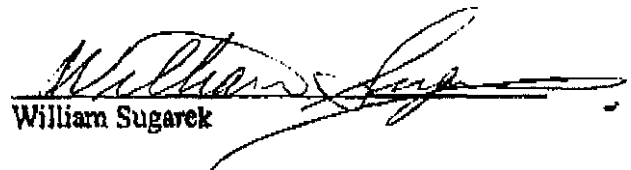
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accepted by Rio Grande City I.S.D., differed from the original submitted to the school district by the fact that the school district accepted Integrity Communication's bid, but opted for a single payment rather than a multiyear payment.

4. Integrity Communications was unaware that Rio Grande City I.S.D. had also been asked for a copy of the legally binding agreement, but had inadvertently supplied a copy of the initial bid proposal that contained both the single payment option and the multiyear payment option. To the best of my knowledge at no time did SLD contact Integrity Communications to inquire about the apparent discrepancy in the two versions of the legally binding agreement, or for clarification of the proper document.

5. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct


William Sugarek

Subscribed and Sworn to Before
Me, a Licensed Notary Public, this
8 day November 2002

My Commission Expires: _____

